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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

No. 80

INTERNATIONAL BROTHERHOOD OF TEAMSTERS and CHAUFFEURS, LOCAL UNION NUMBER 179, AMERICAN FEDERATION OF LABOR, Joliet, Will County, Illinois, and VIRGIL FLOYD, Secretary-Treasurer of said Local Union No. 179,

Petitioners,

VS.

LEO JOHN DINOFFRIA, FRANCES DINOFFRIA, JOHN CLEMENTI and MARY CLEMENTI,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

No. 852

INTERNATIONAL BROTHERHOOD OF TEAMSTERS and CHAUFFEURS, LOCAL UNION NUMBER 179, AMERICAN FEDERATION OF LABOR, Joliet, Will County, Illinois, and VIRGIL FLOYD, Secretary-Treasurer of said Local Union No. 179,

Petitioners,

vs.

LEO JOHN DINOFFRIA, FRANCES DINOFFRIA, JOHN CLEMENTI and MARY CLEMENTI,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

I.

A real controversy is still in existence between the parties.

The respondents assert in their brief opposing the petition for certiorari that the controversy in question is moot since the attorneys of the petitioners and respondents had entered into a stipulation indicating that all matters in controversy had been settled by the parties, and that they had filed a Joint Motion to that effect with the Illinois Su-

preme Court. They also state that the petitioners "carefully refrained from calling this Court's attention" to that stipulation and motion.

It is true that in their petition the petitioners did not emphasize the fact of the stipulation and motion, since they "carefully refrained", in accordance with the Rules of this Court (Rule 27 (d)), from including in the brief any matter which is immaterial and irrelevant for the consideration of the petition. However, the petitioners expressly included in the record, which was ordered by them, the stipulation and motion, in order to show that an attempt to settle the case was made which was defeated by the Illinois Supreme Court. Since that attempt failed, any reference to it in the petition for certiorari was unnecessary as having no bearing upon the controversy in question.

This case very nearly became a moot case, but this failed because of action of the Supreme Court of Illinois. Because of the fact that an issue was likely to be made, that it is a moot case, petitioners had all proceedings relating thereto incorporated in the record.

The parties agreed to a settlement, based upon a joint motion for the dismissal of the suit and all proceedings thereunder. The joint motion was rejected by the Supreme Court of Illinois. In their statement (page 1) "that the Petitioners and Respondents by their respective attorneys entered into a stipulation (Trans. 73) and a joint motion (Trans. 72)," the respondents make it clear that the joint motion and stipulation were both parts of a proposed settlement, and that the settlement was conditioned on the grant of the motion by the Supreme Court of Illinois. There was no completed compromise as in *Texas Consolidated Theatres* v. *Pittman*, 305 U. S. 3. The denial of the motion by the Supreme Court of Illinois made it necessary

that petitioners seek to establish their constitutional rights which had been defeated by the opinion of that state court.

The Supreme Court of Illinois dismissed the writ of error on January 22, 1948; and denied rehearing on March 11, 1948. Dismissal by stipulated agreement of the parties was denied on March 13, 1948 while the Court still had jurisdiction. By its dismissal of writ of error, denial of rehearing, and denial of a motion to dismiss, the Supreme Court of Illinois returned the case to its position when the Appellate Court reversed and remanded it to the trial court with the statement that

> "The decree entered herein, therefore, should be and hereby is reversed and the cause remanded with directions to enter a decree and proceed in accordance with the views expressed herein." (Transcript, 55.)

No subsequent agreement having been made, and no effort being made to enter into an agreement after the denial of an agreed motion to dismiss, petitioners did not seek to pay an amount agreed upon, subject to dismissal of the court proceedings, but took steps, after giving respondents proper notice, to stay the order of the Supreme Court of Illinois by a properly approved bond, in order to enable petitioners to apply to this Court for a writ of certiorari. (Trans. 74-75). Respondents made no objection to stay of the mandate of the state court, and must have known that this stay would defeat payments once agreed upon.

The stipulation by parties in this case indicated that respondents received and receipted for a consideration (Trans. 73), which was, however, not paid, nor to be paid, until the conditions of the agreement had been met. Respondents complain that the petitioners did not explain why they failed to pay this consideration, but they themselves explain by indicating that the agreement between the parties depended upon the granting of motion to dismiss by

the Supreme Court of Illinois. Had they desired, the parties could have entered into another stipulation after the failure of the Supreme Court to entertain their joint motion.

A case is not made moot by the failure to carry out an agreement for its settlement when, as here, the judgment of the Court remains in control. This Court may grant effective relief upon an issue presenting itself under the federal constitution, and such an issue presents itself in this case.

II.

The Illinois Appellate Court decided the constitutional question of freedom of speech.

Despite the respondents' denials, a reading of the Appellate Court's opinion conclusively shows that the Appellate Court decided the question of freedom of speech in its relation to the organization of self-employers by unions. (Petitioners' Brief, 14.) Once more it should be emphasized that the Appellate Court expressly declared that the primary issue of the case was whether the union acted lawfully in instructing its members not to make deliveries to plaintiffs, who were held to be self-employers. A determination of that issue necessarily involved a decision upon the question of freedom of speech. This was recognized by the Illinois Supreme Court which said in its opinion:

> "The Appellate Court specifically states * * * that the Union's conduct could not be protected by freedom of speech." (Transcript, 61.)

The Illinois Supreme Court refused to draw the necessary legal conclusion from that statement; thus necessitating this petition for certiorari.

As soon as the Appellate Court decided the question of freedom of speech, the petitioners pointed to the incorrect-

ness of the Court's ruling and took all possible steps to bring the case before the Illinois Supreme Court, which is the only body in the State of Illinois to determine constitutional questions. The respondents' argument, therefore, that a federal question does not affirmatively appear in the record, is without foundation.

In denying the existence of a constitutional issue, respondents rely upon a contention that there is lack of community of interest between petitioners and respondents—i. e. between union members and those whom the court regarded as self-employers, engaged in the same trade; and that therefore there is no constitutional right to freedom of speech in an effort to seek to induce persons to join a union. (Respondents' Brief 4, 5.) This disagrees with the position of this Court, and ignores the fact that respondents and members of the union are competitors engaged in the same trade, and that the standards of the one have a material effect upon the standards of the others. Respondents fully recognize this in admitting that respondents' hours of operation directly affect members of the union who are engaged in the same work. (Respondents' Brief, 4.) Community of interest is obvious, and is recognized by this Court in *American Steel Foundries* v. *Tri-City Central Trades Council,* 257 U. S. 184.

III.

The right of freedom of speech protected the union in its organizing activities.

The respondents (page 5) contend, by referring to the testimony of Mr. Beshoor (Transcript, 35), that the union instructed the gasoline supply companies—and not the union members—to discontinue further gasoline deliveries to the respondents, and that these communications were

not protected by the right of freedom of speech. The Appellate Court, however, expressly determined that these instructions were given to the union members and therefore this communication was the crux and the basis of its decision. The Appellate Court stated that it was the primary issue of the case, namely whether the union acted lawfully *when it requested its members* not to make deliveries to respondents. (Trans. 47.)

The respondents seem to think that the right of freedom of speech should not protect the union's requests since they amounted to a call for action on the part of the union members. However, the constitutional guarantee of free speech may not be interpreted so narrowly; it extends to more than abstract discussion unrelated to action, and free trade in ideas means free trade and the opportunity to persuade to action, not merely to describe facts. (*Thomas* v. *Collins*, 323 U. S. 516, 89 L. ed. 430, 65 S. Ct. 315.) The necessary purpose of oral communication is to seek to persuade.

The respondents also contend that the union drivers did not act voluntarily in complying with the union's instructions but were coerced to do so by the fact that the union had the right to levy fines upon those of its members who refused to obey its instructions. Without any support by the record, respondents allege "that the stopping of deliveries was not accomplished by persuasion but by placing the drivers in fear of being fined". (Respondents' Brief, 6). There is no evidence of any driver having been fined at any time. Even though a union may have a right to require obedience of its rules so long as one remains its member, it is obvious that respondents are seeking to construct a case independently of the record.

Apart from the fact that the respondents attempt to draw an artificial line between the union and its members, and that there is not even the slightest evidence in the entire

record of the case which shows that the union members did not act out of their own free will, the respondents' contentions are best answered by the language of the well-known case of *Bossert* v. *Dhuy*, 221 N. Y. 342, 117 N. E. 582, in which similar contentions were made. There the Court said, on p. 587:

> "Voluntary orders by a labor organization for the benefit of its members and *the enforcement thereof within the organization is not coercion.* (Emphasis supplied.)

Conclusion.

Petitioners respectfully submit that this case is properly submitted to this Court, and that it involves an important issue as to freedom of speech.

Respectfully submitted,

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